

STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Proposed Acquisition)	FINDINGS OF FACT,
of Control of Dakota Specialty Insurance)	CONCLUSIONS OF LAW,
Company by Aspen U.S. Holdings, Inc.)	AND RECOMMENDED ORDER
)	
)	FILE NO. CO-03-115

INTRODUCTION

Matter Heard. A public telephonic hearing on the above-captioned matter was held on July 24, 2003, before the Deputy Commissioner of Insurance in the State of North Dakota pursuant to the North Dakota Insurance Holding Company Act, N.D. Cent. Code Chapter 26.1-10. The purpose of the hearing was to receive and consider evidence and to allow all interested parties to be heard regarding the proposed acquisition of control (the “Acquisition”) of Dakota Specialty Insurance Company, a North Dakota stock insurance company (“Dakota Specialty”), by Aspen U.S. Holdings, Inc., a Delaware corporation (the “Applicant”).

Form A. The terms and conditions of the proposed Acquisition and change of control are set forth in the Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (the “Form A”) that was filed by the Applicant with the Commissioner of Insurance on June 30, 2003, as amended. The Commissioner finds that the Form A filing of Applicant was substantially complete prior to the date of the hearing.

Persons Appearing. Sarah Ann Davies, Secretary of the Applicant, and Ian George Campbell, Assistant Finance Director of the Aspen group of companies (the “Group”) of which the Applicant is a member, were witnesses who appeared at the hearing to testify or answer

questions on behalf of the Applicant. Attorneys Michael A. Chapnick, Benjamin D. Levy and Craig Fleishman of the law firm of Morgan, Lewis & Bockius, L.L.P. represented the Applicant.

Deputy Commissioner of Insurance Douglas Holloway presided at the hearing. Appearing at the hearing on behalf of the Commissioner of Insurance were General Counsel Charles E. Johnson, Financial Analyst Timothy Hill, and Attorney Craig Burns.

Evidence Presented. Both documentary evidence and oral testimony were presented at the hearing. The written testimony submitted at the hearing by Ms. Sarah Ann Davies was filed as Exhibit 1. The written testimony submitted at the hearing by Mr. Ian George Campbell was filed as Exhibit 2. The written testimony submitted at the hearing by Mr. Timothy Hill was filed as Exhibit 3. The draft stock purchase agreement, dated July 21, 2003, was filed as Exhibit 4. The Form A is on file and appears as Docket No. 2. All interested persons were given the full opportunity to be heard and examine all witnesses and evidence presented at the hearing. As a result, a full and complete record was developed in this matter.

Subsequent Written Submission. Subsequent to the hearing a copy of the executed Purchase Agreement, dated July 25, 2003, was submitted and is filed as Exhibit 5.

Deputy Commissioner of Insurance Douglas L. Holloway, after reviewing the evidence and testimony presented at the hearing and the executed Purchase Agreement, and after considering and reviewing all the documents, instruments, and materials on file herein, hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I.

Notice. An Order fixing July 24, 2003 as the date for the hearing was entered by Commissioner Poolman, which date was agreed to by the Applicant. The Commissioner's office sent notice of the hearing to the Applicant and to its attorneys, Morgan, Lewis & Bockius, L.L.P. via United States mail, first class postage prepaid, on July 16, 2003. Nancy Brady attested to the mailing of the notice of the hearing.

II.

Applicant's Background. Applicant is a newly-formed entity which was incorporated in the State of Delaware on June 2, 2003, as a holding company to facilitate the Group's expansion into the United States insurance market.

III.

Applicant's Location. After the closing of the Acquisition, Dakota Specialty will be renamed Aspen Specialty Insurance Company ("ASIC"). ASIC's underwriting and management will be serviced by the employees of a services company, Aspen Insurance U.S. Services, Inc., wholly-owned by the Applicant. The services company, which will employ approximately forty (40) full-time staff, is a Delaware entity with administrative offices likely to be in Boston, Massachusetts, which will also be the location of ASIC's management company. In the interim, the Applicant's registered office is located at 1209 Orange Street, Wilmington, New Castle County, Delaware, 19801.

Dakota Specialty Insurance Company, to be renamed Aspen Specialty Insurance Company, will remain a North Dakota domestic company.

IV.

Applicant's Significant Affiliates. The Applicant is a member of the Group. The ultimate controlling company of the Group is Aspen Insurance Holdings Limited ("AIHL"), a Bermuda company that is a provider, through subsidiaries, of global specialty insurance and reinsurance. The Group's operations are currently carried out through two main operating companies, Aspen Insurance UK Limited ("AIUK"), based in London, and Aspen Insurance Limited ("AIL"), based in Hamilton, Bermuda. AIHL was incorporated in Bermuda under the name of Exali Reinsurance Holdings on May 23, 2002. It subsequently changed its name to AIHL on November 20, 2002.

V.

Applicant's Regulatory Status. AIUK is the largest independent reinsurance company approved by the Financial Services Authority ("FSA") in the United Kingdom. The FSA is a quasi-governmental entity with responsibility for the regulation of all finance-related companies in the United Kingdom, with a separate department for insurance supervision. The Financial Services Ombudsman, which is accountable to the FSA, is responsible for investigating policyholder complaints. AIUK is authorized by the FSA to underwrite all classes of insurance and reinsurance business in the United Kingdom, with the exception of 'credit' and 'assistance' business. AIL is regulated by the Bermudan Monetary Authority.

VI.

Applicant's General Financial Facts. AIHL intends to contribute approximately \$20 million of capital to the Applicant which will be used to pay the purchase price for the stock of Dakota Specialty. Subsequently, AIHL will contribute approximately \$80 million of capital which will be used to recapitalize ASIC in support of the Applicant's business plan.

VII.

Debt Service. The proposed Acquisition will be funded by capital provided by the parent company of the Applicant. The proposed Acquisition will not be financed by debt incurred by either Dakota Specialty or the Applicant.

VIII.

Applicant's Management. The Applicant's current management is well-qualified, experienced and competent. The Applicant's key personnel have a combined fifty-six (56) years of experience in the insurance industry. The Applicant has already filled certain high level executive positions for its services company. Mr. Peter Coughlan has been hired as President and CEO and Mr. Chris Maciejewski has been hired as Chief Underwriting Officer (Casualty). These executives have extensive experience in the insurance industry and significant experience with the U.S. market.

IX.

Dakota Specialty's General Background. Dakota Specialty is a stock insurance company that was organized under the laws of North Dakota in 1996. Dakota Specialty's business has been in run-off since late 2002. Dakota Specialty's business was written through seven (7) managing general agents. Currently, Dakota Specialty has approximately seven hundred eighty-five (785) policyholders. The remaining Dakota Specialty policyholders will be nonrenewed so that by the end of this year there will be no remaining Dakota Specialty policyholders. Dakota Specialty claims will continue to be processed by Aspen Specialty and are expected to require processing over the next five years.

X.

Proposed Acquisition. The proposed Acquisition is a cash-for-stock transaction. Pursuant to the terms of a Stock Purchase Agreement, dated as of July 25, 2003, between the Applicant and The Insurance Corporation of New York ("Inscorp"), Inscorp will sell to the Applicant all of the issued and outstanding shares of Dakota Specialty in exchange for a cash purchase price. Following the completion of the proposed Acquisition, Dakota Specialty will be a direct, wholly-owned subsidiary of the Applicant. The Applicant anticipates that the closing of the Proposed Acquisition will be completed in the next several weeks.

XI.

Department's Witness. Witness Timothy Hill has been a Financial Analyst with the North Dakota Department of Insurance for the past 11 years. Prior to his current position, Mr. Hill was an internal auditor with a savings and loan corporation and a life insurance company for almost 20 years. Mr. Hill reviewed the Form A and A.M. Best's report for AIUK. Mr. Hill testified that the Applicant is a member of a financially sound and viable holding company system.

XII.

Continuation of Dakota Specialty's Business. Dakota Specialty is presently in run-off; however, Mr. Hill testified that Dakota Specialty's ability to continue to write its lines of insurance should not be hampered by the completion of the proposed Acquisition. Accordingly, the evidence supports a finding that, after the completion of the proposed Acquisition, Dakota Specialty would be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.

XIII.

Competition. Mr. Hill testified that competition will not be lessened in North Dakota after the completion of the proposed Acquisition. Accordingly, the evidence supports a finding that the effect of the completion of the proposed Acquisition would not substantially lessen competition in insurance in this State or tend to create a monopoly therein.

XIV.

Financial Condition Benefits. Mr. Hill testified that it appears that the proposed Acquisition will benefit the financial condition of Dakota Specialty since it will become part of a financially sound holding company. Accordingly, the evidence supports a finding that the financial condition of the Applicant should not jeopardize the financial stability of Dakota Specialty or prejudice the interests of its policyholders.

XV.

No Negative Material Changes. Mr. Hill testified that, based upon his review of the Form A and the testimony provided at the hearing, Dakota Specialty will operate in a way that would maximize advantages in niche markets and capitalize on its management expertise. Mr. Hill testified that the Applicant's proposed plans do not appear to be unreasonable or unfair to the policyholders of Dakota Specialty. Applicant's witnesses testified that there will be no material changes to the Applicant that are unfair or unreasonable to policyholders. Accordingly, the evidence supports a finding that the Applicant's obtaining control of Dakota Specialty would not be unfair or unreasonable to the policyholders of Dakota Specialty or contrary to the public interest.

XVI.

Applicant's Management. Based upon his review of the proposed Acquisition and from the testimony put forth at the hearing, Mr. Hill testified that there is no reason to believe that the competence and integrity of the Applicant's management will pose a risk to Dakota Specialty's policyholders. Accordingly, the evidence supports a finding that the competence, experience, and integrity of the persons who would control the operations of Dakota Specialty are not such that it would not be in the interest of policyholders of Dakota Specialty and the public to permit the proposed Acquisition.

XVII.

No Prejudice to Policyholders. Based upon his own analysis of the proposed Acquisition and from the testimony presented at the hearing, Mr. Hill testified that, in his opinion, the proposed Acquisition does not appear to be hazardous or prejudicial to Dakota Specialty policyholders. Mr. Hill further testified that, if the proposed Acquisition is approved, Dakota Specialty will be part of a stronger holding company system. The Form A and the testimony of the Applicant's witnesses also supports this conclusion. Accordingly, the evidence supports a finding that the proposed Acquisition would not be hazardous or prejudicial to the insurance buying public.

XVIII.

Compensation for Transaction. Based on testimony at the hearing, no officer, director, or employee of Dakota Specialty will receive a bonus or other extraordinary compensation for aiding or assisting in the completion of the proposed Acquisition.

XIX.

Department's Witness Recommendation. Mr. Hill testified that he did not have any present concerns about the proposed Acquisition and its potential impact upon Dakota Specialty policyholders. Based upon his analysis of the proposed Acquisition and the testimony provided at the hearing, Mr. Hill stated that there was no evidence upon which to find that the proposed Acquisition will be harmful to Dakota Specialty policyholders or that the proposed Acquisition otherwise does not satisfy North Dakota's legal requirements. The Form A and the testimony of the Applicant's witnesses also supports his conclusion. Mr. Hill recommended that the Commissioner of Insurance approve the Applicant's application for acquisition of control of Dakota Specialty.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over the proposed Acquisition pursuant to N.D. Cent. Code Chapter 26.1-10.
2. The Applicant has met the procedural requirements of N.D. Cent. Code Chapter 26.1-10 with regard to seeking and receiving approval of the proposed acquisition of control of a domestic insurance company.
3. Based on the summary of the notices given concerning this hearing contained in the Findings of Fact above, sufficient, due, and proper notice of these proceedings was given to all interested parties.
4. N.D. Cent. Code § 26.1-10-03(4) provides that the Commissioner of Insurance shall approve the acquisition unless he finds any of the grounds for disapproval or denial enumerated in N.D. Cent. Code § 26.1-10-03(4)(a) through (f) which generally provide that policyholders of Dakota Specialty must be protected and that the proposed Acquisition is not likely to be hazardous or prejudicial to the insurance buying public.

5. The evidence establishes that the financial condition of the Applicant will not jeopardize the financial stability of Dakota Specialty, or prejudice the interests of Dakota Specialty's policyholders. No evidence or testimony was presented which would suggest that the proposed Acquisition is likely to be hazardous or prejudicial to the insurance buying public.

6. The evidence indicates that the competence, experience, and integrity of the persons who will control the operations of Dakota Specialty are such that it would not be contrary to the interests of the policyholders of Dakota Specialty or the public to permit the proposed Acquisition.

7. No evidence has been introduced to establish that, after the proposed Acquisition, Dakota Specialty will not be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed to write.

8. No evidence has been introduced to establish that, after the proposed Acquisition, the effect of such Acquisition would be to substantially lessen competition in insurance in North Dakota or tend to create a monopoly herein.

9. The evidence establishes that the Applicant has no present plans or proposals to liquidate Dakota Specialty, to sell its assets or consolidate or merge it with any person, or to make any other material change in Dakota Specialty's businesses or corporate structure or management, that are unfair or unreasonable to the policyholders of Dakota Specialty. Dakota Specialty will remain a North Dakota domestic company.

10. The Form A, including all supplementary filings submitted by the Applicant in connection therewith, is in compliance with the provisions of the North Dakota Insurance Holding Company Act.

11. Based upon the Findings of Fact, the evidence presented at the public hearing, and in the Form A, including all supplementary filings submitted by Applicant in connection therewith, meets the standards for approval of the proposed Acquisition pursuant to N.D. Cent. Code § 26.1-10-03(4) and does not support a finding that grounds exist to disapprove the proposed Acquisition.

NOW, THEREFORE, based upon the Findings of Fact and Conclusions of Law, it is ordered as follows:

RECOMMENDED ORDER

The proposed Acquisition of Dakota Specialty Insurance Company by Aspen U.S. Holdings, Inc., under the provisions of the Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer filed with the Commissioner of Insurance is **APPROVED**.

The Commissioner of Insurance will retain jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

DATED this 29th day of July, 2003.

Douglas L. Holloway
Deputy Commissioner of Insurance
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